

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
1510-1348**

JOEY ALGARIN,

**Plaintiff(s),
-against-**

**WASTE MANAGEMENT SOLUTION LLC
a/k/a WM SOLUTIONS d/b/a WM and
WASTE MANAGEMENT OF NEW YORK,
LLC,**

Defendant(s).

CIVIL ACTION NO. _____

**NOTICE OF REMOVAL OF ACTION
FROM STATE COURT**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK AND THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §1441 and 28 U.S.C. §1446(b), defendant **WASTE MANAGEMENT OF NEW YORK, LLC** (hereinafter “**WMNY, LLC**”) hereby remove this action from the Supreme Court of the State of New York, County of Queens, to the United States District Court for the Eastern District of New York.

1. This action is brought to recover damages for personal injuries sustained by the plaintiff on December 6, 2022. Specifically, according to the complaint, on December 6, 2022, plaintiff was working in the scope of his employment for LU Transport, Inc. (“LU”) at the WMNY, LLC Yonkers Transfer Station, located at 325 Yonkers Avenue, Yonkers, New York when he tripped or slipped and fell while he was trying to secure the load on the involved LU truck.

2. On or about April 19, 2024, plaintiff filed a Summons and Complaint in the Supreme Court of the State of New York, Queens County. The action was docketed by the Clerk of the Court

under index number: 708456. In this complaint, plaintiff included only WASTE MANAGEMENT SOLUTION LLC a/k/a WM SOLUTIONS d/b/a WM (“WMS”) as a defendant. See the Summons and Complaint attached hereto as Exhibit “A”.

3. WMS has no relationship with the 325 Yonkers Avenue site including neither owning, nor operating and maintaining 325 Yonkers Avenue site. WMS is thus an improperly included entity in this matter. Upon being informed of the same, plaintiff filed an Amended Complaint on June 11, 2024 including **WMNY, LLC** in the matter. A copy of the summons and Amended Complaint along with the Affidavit of Service as Exhibit “B”.

3. On or about July 1, 2024, **WMNY, LLC** was served with the Summons and Amended Complaint via the Secretary of State. The time for **WMNY, LLC** to answer or otherwise appear in this action expires on July 31, 2024, and **WMNY, LLC**’s time to remove expires as of July 31, 2024. Thus, the instant notice of removal is timely. **WMNY, LLC** will answer according to the applicable Federal Rules.

4. The plaintiff’s complaint lists the plaintiff’s residence as Queens County, New York. For Diversity purposes, the citizenship of a Limited Liability Company is the citizenship of each of its members. See **Bayerische Landesbank, New York Branch v. Aladdin Capital**, 692 F.3d 42, 49 (2d Cir. 2012). To establish citizenship for diversity purposes, a removal must set forth the citizenship of all the members of an LLC, including the place of incorporation and principal place of business of all the corporate entities of the LLC. See **New Millennium Capital v. Juniper Group** at *1 (S.D.N.Y. Mar. 26, 2010) (citation omitted).

5. At the time the complaint was filed and at all times prior thereto and subsequent thereto, including at this time of removal, the sole member of **WMNY, LLC** was and is **WASTE MANAGEMENT OF NEW JERSEY, INC.** (“WMNJ”). For purposes of diversity jurisdiction, a

corporation is deemed to be a citizen of the state in which it was incorporated and the state where it has its principal place of business. see 28 U.S.C. § 1332(c)(1). The United States Supreme Court has determined a corporation’s principal place of business is its “nerve center” – the place “where a corporation’s officers direct, control, and coordinate the corporation’s activities.” **Hertz Corp. v. Friend**, 559 U.S. 77, 81 (2010).

6. Both **WMNY, LLC** and **WMNJ** were incorporated in the State of Delaware.

7. **WMNJ**’s principal place of business is located at 800 Capitol Street, Suite 3000, Houston, Texas 77002.

8. Accordingly, for diversity purposes, **WMNJ** is a citizen of Delaware and Texas. See 28 U.S.C. §§1332(a)(2), (c)(1).

9. In turn, for diversity purposes, **WMNY, LLC** is a citizen of Delaware and Texas for diversity purposes. See 28 U.S.C. §§1332(a)(2), (c)(1).

10. **WMS** is a improperly joined party in this matter, and the Court should disregard and not consider the citizenship of **WMS** for diversity purposes. Specifically, **WMS** had and has no relationship to the 325 Yonkers Avenue property at all and, as a result, all of plaintiff’s allegations against **WMS** in the Amended Complaint are without any possible basis. Under these circumstances, the joinder of **WMS** in this matter is improper and this Court can and should disregard it. See **Hogan v. Raymond Corp.**, 536 Fed. Appx. 207, 210 (3d Cir. 2013).

11. The plaintiff’s stated basis for venue in Queens County was plaintiff’s residence in Queens County at 7329 69th Place, Glendale, NY 11385. This is a civil action for which the Untied States District Court has original jurisdiction pursuant to 28 U.S.C. §1332(a) because there is complete diversity of citizenship between plaintiffs and defendants and because the amount in controversy exceeds \$75,000.

12. This Notice is filed with this Court within thirty (30) days after plaintiff served the summons and complaint on July 1, 2024. There was diversity of citizenship at the time of the commencement of the action, and there is diversity of citizenship at the time of the instant petition. Thus, removal is being timely sought pursuant to 28 U.S.C. 1446(b).

13. **WMNY, LLC** will promptly file a copy of this Notice in the Supreme Court of the State of New York, County of Queens, and will serve a copy of the same on counsel for plaintiff in accordance with 28 U.S.C. 1446(d).

WHEREFORE, WMNY, LLC gives notice that the above-captioned action, commenced against them in the Supreme Court of the State of New York, County of Queens, has been removed to this Court.

Dated: July 31, 2024
New York, New York

DURKIN & DURKIN, LLC

By: /s/ Stephen M. Knudsen
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